

No. 14690

United States
Court of Appeals
for the Ninth Circuit

GEORGE A. SHAHEEN,

Appellant,

vs.

GOVERNMENT OF GUAM,

Appellee.

Transcript of Record

Appeal from the District Court of Guam,
Territory of Guam.

FILED

MAY -2 1955

No. 14690

**United States
Court of Appeals
for the Ninth Circuit**

GEORGE A. SHAHEEN,

Appellant,

vs.

GOVERNMENT OF GUAM,

Appellee.

Transcript of Record

**Appeal from the District Court of Guam,
Territory of Guam.**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Appointment of Special Process Server.....	8
Affidavits in Opposition to Defendant's Motion to Dismiss:	
Hino, Robert M.....	20
Ramirez, Florencio T.....	24
Renforth, William	22
Certificate of Clerk.....	60
Complaint	3
Docket Entries	58
Minute Entries	56
Motion, Filed November 23, 1954, to Take De- fendant's Deposition	9
Affidavit in Support of Motion.....	10
Notice of Taking Deposition, Filed No- vember 23, 1954.....	11
Order for Taking of Defendant's Deposi- tion	10
Motion for Change of Venue on the Ground of Convenience of Parties and Witnesses in the Interest of Justice.....	44

INDEX	PAGE
Motion to Dismiss.....	15
Affidavit of Phelan, Finton J., Jr.....	17
Motion for More Definite Statement and Motion to Strike.....	45
Motion for Production, Inspection and Copying of Documents.....	12
Notice of	14
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	49
Notice of Motion to Dismiss.....	19
Notice of Motion, Filed January 10, 1955.....	48
Notice of Motion—Objection to Taking of Defendant's Deposition	18
Order Denying Defendant's Motion to Vacate Service of Summons.....	28
Order Quashing Motion for Production, Inspection and Copying of Documents, and Notice of Taking Deposition, Filed December 17, 1954	29
Special Appearance and Motion to Dismiss, Filed January 10, 1955.....	30
Affidavit of Phelan, Finton J., Jr.....	35
Statement of Points on Appeal.....	64
Summons	14
Transcript of Hearing on Motions.....	50

NAMES AND ADDRESSES OF ATTORNEYS

For the Appellant:

HEEN, KAI, DODGE & LUM,
206 Hawaiian Trust Bldg.,
Honolulu, T. H.;

FINTON J. PHELAN, JR.,
201 Mesa Bldg.,
Agana, Guam.

For the Appellee:

HOWARD D. PORTER,
Attorney General of Guam,
Agana, Guam.

In the District Court of Guam
for the Territory of Guam

Civil Action No. 73-54

GOVERNMENT OF GUAM,

Plaintiff,

vs.

GEORGE A. SHAHEEN,

Defendant.

COMPLAINT

Count One

1. This is an action involving a tax claim in excess of \$2,000.00 due the Government of Guam. It is brought pursuant to the provisions of Chapter 8A, Title 48, U.S.C. It is authorized by the Commissioner of Revenue and Taxation, Department of Finance, Government of Guam, and directed by the Attorney General, Government of Guam.

2. Defendant has been doing business in Guam during the years 1947 to 1954, inclusive.

3. Defendant has never filed any income tax return with the Government of Guam, nor paid any income tax to the Government of Guam.

4. Under date of November 23, 1954, the Commissioner of Revenue and Taxation caused commissioner's income tax returns to be prepared for defendant and made jeopardy assessments for the amount of income taxes shown thereon, together with penalties and interest, which sums are due and owing the Government of Guam, as follows:

Calendar Year 1951

Amount of Income	\$35,000.00
Amount of Tax	15,640.00
50% Fraud Penalty	7,820.00
Interest to November 23, 1954	2,346.00

Total Jeopardy Assessment\$25,806.00

Calendar Year 1952

Amount of Income	\$35,000.00
Amount of Tax	16,968.00
50% Fraud Penalty	8,484.00
Interest to November 23, 1954	1,696.80

Total Jeopardy Assessment\$27,148.80

Calendar Year 1953

Amount of Income	\$35,000.00
Amount of Tax	16,968.00
50% Fraud Penalty	8,484.00
Interest to November 23, 1954	678.66

Total Jeopardy Assessment\$26,130.66

Calendar Year 1954

Amount of Income	\$15,000.00
Amount of Tax	4,002.00
50% Fraud Penalty	2,001.00
Interest to November 23, 1954	325.17

Total Jeopardy Assessment\$ 6,328.17

Total Jeopardy Assessments, 1951-1954 \$85,413.63

Count Two

1. The Government of Guam realleges paragraphs 1 and 2 of Count One as if set forth in full herein.

2. Defendant has never filed any Business Privilege Tax return, or paid any Business Privilege Tax, as required by Bill No. 3, Eighth Guam Congress, approved effective as law November 12, 1947, which law, as amended, was subsequently re-enacted and codified in Public Law 88, First Guam Legislature, 1952 Second Special Session, effective November 29, 1952, as Chapter 6, Title XX, of the Government Code of Guam.

3. On November 22, 1954, the Commissioner of Revenue and Taxation, Department of Finance, Government of Guam, caused commissioner's returns to be filed for the defendant as follows:

Calender Year	Gross Receipts	Tax
1951	\$35,000.00	\$ 700.00
1952	35,000.00	700.00
1953—January to July ...	20,416.69	408.33
		<hr/>
		\$1,808.33

4. There is due and owing the Government of Guam for such tax the sum of \$1,808.33.

Count Three

1. The Government of Guam realleges paragraphs 1 and 2 of Count One as if set forth in full herein.

2. Defendant has never filed any Business Privilege Tax return, or paid any Business Privilege Tax, as required by Public Law 43, Second Guam Legislature, approved and effective as law July 22, 1953, and codified as Chapter 6, Title XX, of the Government Code of Guam.

3. On November 23, 1954, the Commissioner of Revenue and Taxation, Department of Finance, Government of Guam, caused commissioner's returns to be prepared for the defendant as follows:

Aug.-Dec., 1953

Gross Receipts	\$14,583.35
Tax	291.67
Penalty	35.00
50% Penalty	145.85
Interest to Date	17.65

Total Liability\$490.17

Jan.-Apr., 1954

Gross Receipts	\$10,000.00
Tax	200.00
Penalty	20.00
50% Penalty	100.00
Interest to Date	10.53

Total Liability\$330.53

\$820.70

4. There is due and owing the Government of Guam for such tax the sum of \$820.70.

Wherefore, the Government of Guam prays as follows:

1. That judgment be entered in favor of the Government of Guam in the sum of \$85,413.63 under Count One.

2. That judgment be entered in favor of the Government of Guam in the sum of \$1,808.33 under Count Two.

3. That judgment be entered in favor of the Government of Guam in the sum of \$820.70 under Count Three.

4. That such other relief be granted as may be warranted in the premises.

November 23, 1954.

/s/ HOWARD D. PORTER,
Attorney General;

/s/ LOUIS A. OTTO, JR.,
Deputy Attorney General;

/s/ LEON D. FLORES,
Island Attorney;

/s/ RICHARD ROSENBERRY,
Deputy Island Attorney, Attorneys for Government
of Guam; Government of Guam, Agana, Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

APPOINTMENT—SPECIAL
PROCESS SERVER

Whereas the attorneys for the plaintiff in the within case have requested that Gregorio S. Babauta be specially appointed to serve process, and

Whereas the above-named Gregorio S. Babauta has been found by me to be over the age of eighteen years of age and in all respects is a proper person of suitable discretion and well qualified to serve summons and complaints,

Now, Therefore, It Is Herewith Ordered that the said Gregorio S. Babauta be, and he hereby is, appointed a Special Process Server of summons and complaint in the within-captioned case, to be served in such manner as prescribed by Statute. The said Gregorio S. Babauta shall serve without fee or compensation from the District Court of Guam, and all his official acts, legally performed while acting as a special process server, are entitled to full faith and credence.

Dated this 23rd day of November, 1954, at Agana, Guam.

ROLAND A. GILLETTE,
Clerk of the Court;

[Seal] By /s/ J. A. CRISOSTOMO,
Deputy Clerk, District
Court of Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

MOTION

Now comes the plaintiff, Government of Guam, by its attorneys, Howard D. Porter, Leon D. Flores, Louis A. Otto, Jr., and Richard Rosenberry, and moves the court as follows:

1. For an order, pursuant to Rule 26 of the Federal Rules of Civil Procedure, granting the Plaintiff leave to take the oral deposition of George A. Shaheen, defendant, who has knowledge of the facts, files, writings, books, papers and documents pertaining to transactions between certain businesses on the Territory of Guam and the defendant.

The depositions are for use at the trial of the above-entitled action for the purposes of discovery of evidence to support the plaintiff's allegations and to aid the plaintiff in preparation and presentation of its case.

November 23, 1954.

/s/ HOWARD D. PORTER,
Attorney General;

/s/ LOUIS A. OTTO, JR.,
Deputy Attorney General;

/s/ LEON D. FLORES,
Island Attorney;

/s/ RICHARD ROSENBERRY,
Deputy Island Attorney, Office of Attorney General,
Government of Guam, Agana, Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION

Harry L. Mangerich, being first duly sworn, states as follows:

1. The documents mentioned in the foregoing motion are all business records of the defendant and presumably in his possession and control.

2. Such documents have reference to business transactions of the defendant, and should show the extent of his business operations on Guam, his gross income, and other matters relevant to the tax liability of the defendant as alleged in the complaint.

/s/ HARRY L. MANGERICH.

Sworn to and subscribed before me this 23rd day of November, 1954.

[Seal] /s/ J. A. CRISOSTOMO,
Deputy Clerk, District
Court of Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

ORDER

On this 23rd day of November, 1954, upon the ex parte application of the plaintiff, Government of Guam, to take the oral deposition of George A. Shaheen, defendant, and the court being fully ad-

vised, and being of the opinion that there is urgent necessity for the taking of the deposition, it is

Ordered that the oral deposition of George A. Shaheen may be taken by plaintiff.

Dated: November 23, 1954.

/s/ PAUL D. SHRIVER,
Judge, District Court
of Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION

To George A. Shaheen, Agana, Guam:

Please take notice that the plaintiff, Government of Guam, will take the testimony, on oral examination of George A. Shaheen, before V. A. Zafra, Chief Commissioner, a Notary Public in and for the Territory of Guam, on the 30th day of November, 1954, at 9:00 a.m., and thereafter from day to day as the taking of the deposition may be adjourned, at the office of said Chief Commissioner, at Agana, Guam.

The testimony of said witness will be taken pursuant to the order of court entered the 23rd day of

November, 1954, a copy of which is hereto attached and is herewith served upon you.

/s/ HOWARD D. PORTER,
Attorney General;

/s/ LOUIS A. OTTO, JR.,
Deputy Attorney General;

/s/ LEON D. FLORES,
Island Attorney;

/s/ RICHARD ROSENBERRY,
Deputy Island Attorney, Attorneys for the Govern-
ment of Guam; Government of Guam, Agana,
Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION, INSPECTION AND COPYING OF DOCUMENTS

The Government of Guam moves the court for an order requiring defendant to produce and to permit the plaintiff to inspect and to copy each of the following documents:

1. All books, records and other financial data relating to defendant's operating, conducting and doing business on Guam, M. I., for the period January 1, 1947, to and including November 23, 1954.

2. All contracts, franchises or agreements relating to defendant's operating, conducting and doing

business on Guam, M. I., for the period January 1, 1947, to and including November 23, 1954.

3. All copies of Federal Income Tax Returns filed with the United States Treasury for the years 1947, 1948, 1949, 1950, 1951, 1952 and 1953.

4. All Territory of Hawaii Gross Income Tax returns reflecting gross sales as filed with the Territory of Hawaii for all periods applicable between January 1, 1947, and November 23, 1954.

The defendant has the possession, custody, or control of the foregoing documents. Each of them constitutes or contains evidence relevant and material to a matter involved in this action as shown in Exhibit A hereto attached.

November 23, 1954.

/s/ HOWARD D. PORTER,
Attorney General;

/s/ LOUIS A. OTTO, JR.,
Deputy Attorney General;

/s/ LEON D. FLORES,
Island Attorney;

/s/ RICHARD ROSENBERRY,
Deputy Island Attorney, Attorneys for Government
of Guam; Government of Guam, Agana, Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION

To George A. Shaheen:

Please take notice that the undersigned will bring the above motion on for hearing before this court, in the courtroom, Legislative Building, on December 3, 1954, at 9:30 a.m., or as soon thereafter as counsel can be heard.

November 23, 1954.

/s/ HOWARD D. PORTER,
Attorney General;

/s/ LOUIS A. OTTO, JR.,
Deputy Attorney General;

/s/ LEON D. FLORES,
Island Attorney;

/s/ RICHARD ROSENBERRY,
Deputy Island Attorney, Attorneys for Government
of Guam; Government of Guam, Agana, Guam.

[Endorsed]: Filed November 23, 1954.

[Title of District Court and Cause.]

SUMMONS

To the Above-Named Defendant, George A. Shaheen:

You are hereby summoned and required to serve upon Leon D. Flores, Island Attorney, plaintiff's attorney, whose address is Office of the Attorney General, Administration Building, Agana, Guam,

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: November 23, 1954.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk of Court.

Affidavit of Service attached.

[Endorsed]: Filed November 24, 1954.

[Title of District Court and Cause.]

MOTION TO DISMISS

The defendant, George A. Shaheen, appearing specially for the purpose of this motion, objects to the jurisdiction of the court and moves the court to vacate and set aside the return of service issued by the plaintiff herein and served upon this defendant on the 23rd day of November, 1954, for the following reasons:

1. The defendant is a citizen and resident of the Territory of Hawaii, residing in the City of Honolulu, whose address is P. O. Box 3235 in said City, and is neither a resident of the unincorporated territory of Guam or conducting a business therein.

2. That the said defendant, George A. Shaheen, was in Guam from the 14th day of November, 1954, until the time of service for the purpose of appear-

ing as a witness and as the defendant in two lawsuits, namely, Florencio T. Ramirez, Juliana Ramirez and Jesus Ramirez, d/b/a Guam Style Center, vs. Shaheen's of Honolulu, Ltd., formerly George A. Shaheen Co., Ltd.; and Shaheen's of Honolulu, Ltd., v. Florencio T. Ramirez, Juliana Ramirez, and Jesus Ramirez, d/b/a Guam Style Center.

3. That as a party in witness in these suits defendant is immune to service of process in any other action during the period of trial and for a reasonable time thereafter.

4. And for the further reason that the special process server herein appointed, Gregorio Babauta, is an employee of the attorney for the plaintiff herein, being a law clerk in the said Howard D. Porter's office.

5. The defendant further moves the court to quash the notice of taking deposition served upon the defendant herein on the ground that the notice is scheduled to be taken before one V. A. Zafra, chief commissioner, who is an employee of the plaintiff herein.

This motion is based upon the pleadings and files in this case and the attached memorandum of points and authorities.

Dated this 29th day of November, 1954, at Agana, Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT

Unincorporated Territory of Guam,
Municipality of Agana—ss.

Finton J. Phelan, Jr., being first duly sworn,
deposes and says:

1. That he is an attorney at law, practicing in the City of Agana, unincorporated Territory of Guam, and maintaining offices at Suite 201-203 Mesa Building, First Street West, Agana, Guam. That he has been the attorney for defendant, George A. Shaheen, since on or about the 16th day of July, 1953.

2. That of your affiant's personal knowledge in the past the said George A. Shaheen has not maintained an office or a business within the unincorporated Territory of Guam, and for a period of many months preceding the 14th day of November, 1954, said George A. Shaheen was in the continental United States.

3. That said defendant, George A. Shaheen, is a citizen of the Territory of Hawaii, residing in the City of Honolulu, with his address P. O. Box 3235 in said City.

4. That said George A. Shaheen was to the personal knowledge of your affiant on Guam from the 14th day of November, 1954, until the 23rd day of November, 1954, solely for the purpose of appearing as a witness in two certain lawsuits, namely, Florencio T. Ramirez, Juliana Ramirez, and Jesus

Ramirez, d/b/a Guam Style Center, vs. Shaheen's of Honolulu, Ltd., formerly George A. Shaheen Co., Ltd., and Shaheen's of Honolulu, Ltd., vs. Florencio T. Ramirez, Juliana Ramirez and Jesus Ramirez, d/b/a Guam Style Center, and for no other purpose.

Further your deponent sayeth not.

Dated this 29th day of November, 1954, at Agana, Guam.

/s/ FINTON J. PHELAN, JR.,
Affiant.

Subscribed and sworn to before me this 29th day of November, 1954.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk of the District
Court of Guam.

[Endorsed]: Filed November 29, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION

To Howard D. Porter, Esquire, Attorney for Plaintiff, Attorney General's Office, Government of Guam, Agana, Guam:

Please take notice that the defendant, George A. Shaheen, through his undersigned counsel objects to the taking of his deposition upon oral examination on the 30th day of November, 1954, at 9:00 a.m. at the City of Agana, unincorporated Territory of Guam, before V. A. Zafra, Chief Commissioner, at

the office of said Chief Commissioner, in Agana, Guam, on the following grounds:

1. That a Motion to Dismiss on the ground of lack of jurisdiction of this court over this defendant has been filed this day and as yet has not been heard.

2. On the further ground that said V. A. Zafra, Chief Commissioner, is an employee of the plaintiff herein and is therefore disqualified.

3. And on the further ground that the office of said Chief Commissioner is an office owned and maintained by the plaintiff herein.

This objection will be brought to the attention of the Court at its courtroom, Guam Congress Building, at the City of Agana, unincorporated Territory of Guam, on Friday, the 3rd day of December, 1954, at 9:30 a.m., or at any other time that counsel can be heard.

Dated this 29th day of November, 1954, at Agana, Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant.

Received November 29, 1954.

[Endorsed]: Filed November 29, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION

To Howard D. Porter, Esquire, Attorney for Plaintiff:

Please take notice that the attached Motion to

Dismiss will be brought for hearing before the District Court of Guam in its courtroom, Guam Congress Building, on the 3rd day of December, 1954, at 09:30 a.m. of said day, or as soon thereafter as counsel can be heard.

Dated this 29th day of November, 1954, at Agana, Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant.

Received November 29, 1954.

[Endorsed]: Filed November 29, 1954.

[Title of District Court and Cause.]

AFFIDAVIT

Robert M. Hino, being first duly sworn, deposes and says:

(1) That he is an accountant, employed as auditor for the Department of Finance, Government of Guam.

(2) That your affiant hereby certifies that he has checked the books and records of Fashions, Inc., Agana, Guam, and that said books reflect the following:

(a) An account with Zenith Radio Corporation, 6001 Dickens Avenue, Chicago, Illinois, and the invoices, bills of lading, etc., show that all merchandise from the company is charged to George A. Shaheen, Fashions, Inc., Agana, Guam.

(b) A partial check of this account shows entries as set out in Exhibit "1," attached hereto, and made a part hereof.

(3) The first invoices in this account reflect business in the first part of 1953 and were billed to George A. Shaheen, Guam Style Center.

(4) Some of the payments on this account were made by checks from Fashions, Inc., to George A. Shaheen, personally, and cashed locally.

(5) The records also indicate a personal account with George A. Shaheen with the following entries:

10/31/53	Loan—Cash		\$1,250.00
10/31/53	Trnsf from Slifka a/c		500.00
10/31/53	Royal Mfg. Inv. #5632		605.63
			<hr/>
			\$2,355.63
10/31/53	Pd. G.A.S. by Ck. #500	\$ 64.45	
	a/c Royal		
12/31/53	Pd. G.A.S. by Ck. #624	220.03	284.48
	a/c Slifka		
	Bal. due G. A. Shaheen		\$2,071.15

Further your deponent sayeth not.

Dated this 9th day of December, 1954, at Agana, Guam.

/s/ ROBERT M. HINO.

Subscribed and sworn to before me this 9th day of December, 1954.

[Seal] /s/ J. A. CRISOSTOMO,
Deputy Clerk of the District
Court of Guam.

EXHIBIT "1"

Date	Invoice No.	Amount of Purchase
2/16/54	58290	\$ 35.00
2/24/54	16722	873.79
2/ 3/54	57637	2.37
3/ 9/54	59463	1,092.64
3/12/54	59605	3.80
3/12/54	59609	40.11
4/28/54	16993	878.74
4/29/54	18854	1,059.12
4/ 9/54	60908	63.04
4/29/54	61773	1.00
5/13/54	17069	802.12
5/18/54	19052	1,318.32
5/28/54	62990	59.08
5/28/54	63008	1,059.12
5/20/54	62890	19.63
5/10/54	62172	1,318.32
5/11/54	62228	19.90
6/17/54	63821	33.45
6/14/54	63644	109.24
10/29/54	69528	633.00
10/26/54	17822	858.72
10/20/54	17790	1,803.12

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION OF
MOTION TO DISMISS

Territory of Guam,
Municipality of Agana—ss.

William Renforth, being first duly sworn on oath,
deposes and says:

1. That he is the Chief of Administration of the
Commercial Port of Guam, and that in his official

capacity he is in charge of the records and accounts of the Commercial Port of Guam which show all entries of merchandise, type, quantity and value, imported into Guam, and the consignors and consignees of such merchandise.

2. That the records and accounts of the Commercial Port of Guam contain entries therein reflecting that on the following dates merchandise in the various quantities and values was imported into Guam, of which George A. Shaheen, Agana, Guam, was the final consignee.

Date Entered	Consignor	Items	Declared Value
Nov. 23, 1953	International Expeditors, Inc., A/C Zenith Radio Corp., Chicago, Ill.	Radios and Batteries	\$3,231.56
Dec. 21, 1953	Same	Radios and Batteries	2,872.18
Jan. 21, 1954	Same	Radios	324.00
Jan. 22, 1954	Zenith Radio Corp., Chicago, Ill.	Batteries Dry Cell	183.43
Feb. 26, 1954	Zenith Radio Corp., Chicago, Ill.	Batteries Dry Cell	603.75
Mar. 30, 1954	International Expeditors, Inc., A/C Zenith Radio Corp., Chicago, Ill.	Radios	858.84
Apr. 19, 1954	Zenith Radio Corp.	Dry Batteries	1,027.80
July 6, 1954	Same	Radios and Batteries	2,090.81
Dec. 3, 1954	Same	Radios and Batteries	3,294.84

Dated this 8th day of December, 1954.

/s/ WILLIAM RENFORTH.

Subscribed and sworn to before me this 8th day of December, 1954.

[Seal] /s/ V. U. ZAFRA,

Notary Public, Agana, Guam.

My commission expires January 20, 1955.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION OF
MOTION TO DISMISS

Territory of Guam,
Municipality of Agana—ss.

I, Florencio T. Ramirez, hereby state on oath:

1. I am a co-owner of Guam Style Center, Mong-mong, Guam, and have been co-owner and manager of this company since before January 1, 1948. As manager of the company, at all times herein mentioned, I have been fully cognizant of all of the business affairs of Guam Style Center and its transactions with George A. Shaheen and George A. Shaheen Co., Ltd.

2. Sometime during the month of January, 1948, I executed a contract on behalf of Guam Style Center with George A. Shaheen on behalf of George

A. Shaheen Co. In the negotiations for this contract George A. Shaheen advised us that he was George A. Shaheen Co. Mr. Shaheen and his company became the exclusive purchasing agent for Guam Style Center, and all of the buying was done through George A. Shaheen Co.

In the carrying out of this contract we did the following things:

1. Mr. Shaheen did all of the buying of the Guam Style Center, and charged all of the purchases to George A. Shaheen Co., lending the credit of his company to Guam Style Center.

2. Guam Style Center had to submit a business report each week, and only certain amounts were allowed to be spent before the bills were paid to George A. Shaheen Co.

3. Mr. Shaheen also assisted and advised in the management of the business and advertising and merchandising.

3. We entered into a second contract sometime in the month of September, 1948. This contract was about the same contract as the first one, except the percentage was a little different. This contract was written by Mr. Shaheen in his own handwriting. It was understood, again, that this was a contract between George A. Shaheen Co. and Guam Style Center, and not an individual contract with George A. Shaheen. To carry out this contract we did the same things enumerated above under paragraph 2. This contract was in effect until February, 1950,

and during these two years George A. Shaheen was in Guam for about three months each year working with Guam Style Center in the carrying out this contract. During this time Mr. Shaheen also sold to other stores on the Island from George A. Shaheen Co.

4. On February 1, 1950, Guam Style Center and George A. Shaheen Co., Ltd., entered into a new contract. The main change in this contract was that the credit of Guam Style Center was to be used in addition to the credit of George A. Shaheen Co., Ltd. This contract was executed in the name of the corporation and signed by George A. Shaheen, President. We operated under this contract, and at no time did any person from the corporation object to its terms or attempt to repudiate this contract. During the term of this contract Mr. Shaheen was in Guam from three to four months per year. Mr. Shaheen was still using the credit of his company, advising and assisting in the management of the business, and still checking the finances of the company during this time.

5. We entered the last contract with George A. Shaheen Co. in April, 1952. In this contract the commission was based on sales by Guam Style Center instead of on purchases. This contract was carried out in the same manner as all the previous contracts until we stopped doing business with them in March, 1953.

6. During the time George A. Shaheen was buying for us, he made an arrangement with the Zenith

Corporation of Chicago, Illinois, for Guam Style Center to be the distributor for its products on Guam. We have not been distributors for these products since we stopped doing business with George A. Shaheen Co.

7. During the carrying out of these contracts the Guam Style Center paid the following approximate amounts to George A. Shaheen Co., or George A. Shaheen Co., Ltd., or Shaheen's of Honolulu, Ltd.:

(a) Goods direct from the Shaheen Companies	\$ 500,000.00
(b) Goods bought from other companies through the Shaheen Companies	800,000.00
	<hr/>
	\$1,300,000.00

There were also purchases of approximately \$300,000.00 from other companies that Guam Style Center paid direct and on which there was a 10% commission paid to George A. Shaheen.

8. George A. Shaheen had the privilege of drawing checks on the bank account of Guam Style Center for about one and one-half years, and during this time he wrote approximately \$320,000.00 in checks. Some were for his personal bills and expenses which were charged to his commissions. The majority were to his corporation in Honolulu or other companies for purchases for Guam Style Center.

9. George A. Shaheen kept purchase orders of the corporation with him while he was in Guam and often wrote the purchase orders while in Guam and sent them direct to various vendors in the United States.

Dated this 9th day of December, 1954.

/s/ FLORENCIO T. RAMIREZ.

Subscribed and sworn to before me this 9th day of December, 1954.

[Seal] /s/ JOAQUIN O. AGASA,
Notary Public in and for
the Territory of Guam.

My commission expires 1/22/55.

[Endorsed]: Filed December 9, 1954.

[Title of District Court and Cause.]

ORDER

The defendant's motion to vacate and set aside the return of service issued by the plaintiff herein and served upon the defendant on the 23rd day of November, 1954, having been noticed for hearing and heard on the 10th day of December, 1954, and the court being advised in the premises and after due consideration thereof, it is hereby ordered that the defendant's motion be and it is hereby denied.

Dated December 14th, 1954.

/s/ PAUL D. SHRIVER,
District Judge.

Approved as to Form:

/s/ FINTON J. PHELAN, JR.,

/s/ THAD TISDALE,

Assistant Attorney General, Attorney General's
Office, Agana, Guam.

[Endorsed]: Filed December 14, 1954.

[Title of District Court and Cause.]

ORDER QUASHING MOTION FOR PRODUCTION, INSPECTION AND COPYING OF DOCUMENTS, AND NOTICE OF TAKING DEPOSITION

The defendant's motion to vacate and set aside the motion for production, inspection and copying of documents and the order and notice of the taking of the defendant's deposition, having been duly heard on the 10th day of December, 1954, the court being fully advised in the premises and after due consideration thereof,

It Is Hereby Ordered that the notice of taking of defendant's deposition and the order granting the same entered on the 23rd day of November, 1954, is hereby quashed, and the motion for production, inspection and copying of documents filed on

the 23rd day of November, 1954, is hereby denied. It appearing to the Court that V. A. Zafra, Chief Commissioner, a Notary Public, is, in the meaning of the Rule, an interested party and therefore disqualified as an officer before whom such deposition can be taken.

Dated at Agana, Guam, this 13th day of December, 1954.

/s/ PAUL D. SHRIVER,
Judge of the District
Court of Guam.

Approved as to Form:

.....,
THAD TISDALE,
Assistant Attorney General, Government of Guam,
Agana, Guam.

[Endorsed]: Filed December 17, 1954.

[Title of District Court and Cause.]

SPECIAL APPEARANCE AND MOTION TO DISMISS

The defendant, George A. Shaheen, appearing specially for the purpose of this motion only, moves the court as follows:

I.

To dismiss the complaint on file herein in that it appears upon its face that the complaint shows this

court is without jurisdiction, and that the requisite jurisdictional averments are not contained within the complaint.

II.

To dismiss the complaint on the ground that the United States of America is a necessary party and has not been joined either as a party plaintiff or as a party defendant.

III.

To dismiss the complaint on the ground that neither the Commissioner of Internal Revenue nor the Attorney General of the United States has authorized or directed the commencement of this action.

IV.

To dismiss the complaint on the ground that it fails to state a claim upon which relief can be granted.

V.

To dismiss the complaint on the ground that Chapter 8A, Title 48, USCA, does not contain any grant of jurisdiction in this cause.

VI.

To dismiss the complaint on the ground that the plaintiff seeks to enforce a statute of the United States and such enforcement rights are by statute reserved to the Attorney General of the United States.

VII.

To dismiss the complaint on the ground that the statutes of the United States require the defendant

to report his entire income to the United States Bureau of Internal Revenue and not to the plaintiff.

VIII.

To dismiss the complaint on the ground that the relief sought, if any the plaintiff be entitled to, should be obtained from the United States of America and not from this defendant.

IX.

To dismiss the complaint on the ground that the defendant as a citizen and resident of the Territory of Hawaii is by the provisions of the statutes of the United States exempt from the payment of taxes to the unincorporated territory of Guam, which unincorporated territory is entitled to receive such portion of any taxes so paid to the United States as the Treasury Department of the United States may determine to have been derived from Guam and by the Treasury Department of the United States then pursuant to statute covered into the Treasury of Guam.

X.

To dismiss the complaint in that the plaintiff lacks the capacity to sue under the statutes of the United States.

XI.

To dismiss the complaint on the ground that the defendant is not a citizen or resident of the unincorporated territory of Guam and at the time of service of process was not transacting any business within said unincorporated territory of Guam and

was in the unincorporated territory of Guam solely to defend an action in this court.

XII.

To dismiss the action in that the plaintiff is not entitled to the relief herein prayed for in this jurisdiction in that the complaint fails to show jurisdiction of the court over the defendant.

XIII.

To dismiss the complaint herein on the ground that process and service is insufficient as required by the Federal Rules of Civil Procedure, Rule 4.

XIV.

To dismiss the complaint on the ground that with respect to income tax within the unincorporated territory of Guam there is no such officer as the Commissioner of Revenue and Taxation and therefore no officer of the unincorporated territory of Guam has the authority, power or duty to prepare commissioner's income tax return or to make jeopardy assessments.

XV.

To dismiss the complaint on the ground that the claim is a void and illegal attempt to exact a penalty or tax contrary to the provision of the Constitution upon interstate commerce.

XVI.

To dismiss the complaint on the ground that the conditions precedent to the bringing to this action have not been averred.

XVII.

To dismiss the complaint on the ground that the defendant does not owe any taxes to either the Government of Guam or any of its officers.

XVIII.

To dismiss the complaint on the ground that the District Director of Internal Revenue at Baltimore, Maryland, is the proper official duly authorized by law to collect income taxes within the unincorporated territory of Guam.

XIX.

To dismiss the complaint on the ground that no officer of the territorial government of Guam has been authorized by statute to collect any income tax.

XX.

To dismiss the Second and Third Counts of the Complaint herein on the ground that the provisions of Section 19503 of Chapter XX of the Government Code of Guam have not been complied with and until such compliance no action can be maintained.

XXI.

To dismiss the complaint on the ground that there is a misjoinder of causes of action.

XXII.

To dismiss the complaint on the ground that the venue of this action is improper.

This motion is based upon the pleadings and files in this case, the attached documents and the statutes

of the United States and the Codes of the unincorporated territory of Guam.

/s/ FINTON J. PHELAN, JR.,

Attorney for Defendant,

George A. Shaheen;

/s/ FINTON J. PHELAN, JR.,

For Heen, Kai, Dodge & Lum, Attorneys for Defendant, George A. Shaheen, 206 Hawaiian Trust Building, Honolulu, T. H.

EXHIBIT A

In the District Court of Guam, in and for the
Unincorporated Territory of Guam

Civil No. 73-54

GOVERNMENT OF GUAM,

Plaintiff,

vs.

GEORGE A. SHAHEEN,

Defendant.

AFFIDAVIT

Unincorporated Territory of Guam,
City of Agana—ss.

Finton J. Phelan, Jr., being first duly sworn, deposes and says:

1. That he is an attorney at law, practicing in the City of Agana, unincorporated territory of Guam, and maintaining offices at Suite 201-203

Mesa Building, First Street West, Agana, Guam. That he has been the attorney for defendant, George A. Shaheen, since on or about the 16th day of July, 1953. That he has known the defendant herein, George A. Shaheen, since sometime in the year 1950.

2. That of your affiant's personal knowledge in the past said George A. Shaheen has not maintained an office or place of business within the unincorporated territory of Guam, but was during the entire time that your affiant knew the said George A. Shaheen employed or associated with that certain partnership known as Guam Style Center. That for a period of many months preceding the 1st day of November, 1954, the said George A. Shaheen was absent from Guam and was in the Territory of Hawaii or the continental United States.

3. That said defendant, George A. Shaheen is a citizen and resident of the Territory of Hawaii, maintaining an address at Post Office Box 3235 in said City of Honolulu, Territory of Hawaii.

4. That the said defendant George A. Shaheen was to the personal knowledge of your affiant within the unincorporated territory of Guam from the 14th day of November, 1954, until on or about the 26th day of November, 1954, solely for the purpose of appearing in two certain law suits, namely, Guam Style Center, et al., v. George A. Shaheen, et al., and Shaheen's of Honolulu, Ltd., v. Guam Style Center, et al. That from on or about the 1st day

of April, 1953, until on or about the 1st day of October, 1953, said George A. Shaheen was engaged while within Guam in endeavoring to settle and prepare his defense for said lawsuits.

5. That while within the unincorporated territory of Guam, said George A. Shaheen resided at the Pan Am Hotel as a transient, which hotel has for a considerable period in the past been closed and out of business.

6. That the defendant, George A. Shaheen, whose permanent address is in the City of Honolulu, Territory of Hawaii, and is a man over 70 years of age, and that in the proper defense of this lawsuit numerous files, documents and other evidence, as well as numerous witnesses, would have to be transported to the unincorporated territory of Guam at great expense and cost to the defendant, which cost said defendant is not in a position to defray, and a great number of witnesses would have to be called and for whom there does not exist within the unincorporated territory of Guam adequate and suitable hotel facilities or other housing facilities.

7. That attached hereto are purported notices and demands with respect to an income tax and a business privilege tax for the unincorporated territory of Guam which were dated the 6th day of December, 1954, and the 7th day of December, 1954, and which were forwarded to the defendant, George A. Shaheen, in the City of Honolulu, Territory of Hawaii.

Further your affiant sayeth not.

Dated this 10th day of January, 1955, at Agana, Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant,
George A. Shaheen.

Unincorporated Territory of Guam,
City of Agana—ss.

Finton J. Phelan, Jr., being duly sworn, deposes and says that he has read the above and foregoing instrument and the facts therein stated are true, except to those stated on information and belief and that he believes them to be true.

/s/ FINTON J. PHELAN, JR.,
Affiant.

Subscribed and sworn to before me this 10th day of January, 1955.

[Seal] /s/ E. L. CORYELL,
Notary Public in and for the Unincorporated Territory of Guam.

My commission expires July 27, 1955.

(Copy)

Government of Guam, Agana, Guam

December 6, 1954.

Mr. George A. Shaheen,
c/o Pan American Hotel,
Agana, Guam, M. I.

Dear Sir:

Under date of November 23, 1954, this office pursuant to Section 3612 of the Internal Revenue Code of 1939, made determinations of your income tax liability and prepared income tax returns on your behalf for the calendar years ending December 31, 1951, 1952, 1953. Your 1954 taxable year was terminated on October 31, 1954, and a return likewise prepared for you for the period January 1, 1954, to October 31, 1954.

A jeopardy assessment of the amounts so determined has been made under Section 273(a) and Section 6961(a) of the Internal Revenue Code of 1939 and 1954, respectively. A summary of the tax, penalty and interest so computed follows:

Year	Tax Deficiency	50% Fraud Penalty	Interest	Total
1951	\$15,640.00	\$ 7,820.00	\$ 2,346.00	\$25,806.00
1952	16,968.00	8,484.00	1,696.80	27,148.80
1953	16,968.00	8,484.00	678.66	26,130.66
1954	4,002.00	2,001.00	325.17	6,328.17
	<hr/>	<hr/>	<hr/>	<hr/>
	\$53,578.00	\$26,789.00	\$ 5,046.63	\$85,413.63

Notice and demand is herewith made for immediate payment of the above-listed taxes, penalties and interest.

Very truly yours,

HARRY L. MANGERICH,
Commissioner of Revenue and
Taxation.

jcm

(Copy)

Government of Guam, Agana, Guam

December 7, 1954.

Mr. George A. Shaheen,
Agana, Guam.

Dear Sir:

Information available to this office indicates that you are or have been engaged in a business activity in Guam. The "gross receipt" derived from such activity are taxable under the provisions of Chapter 6, Title XX of the Government Code of Guam.

The records of this office disclose that you have not registered to do business in Guam, and that no tax return have been filed or tax paid as required by law.

	1/1/51	8/1/53
	thru	thru
	7/31/53	4/30/54
Estimated Tax	\$1,808.33	\$ 491.67
Penalty	90.42	300.85
Interest	-0-	28.18
	<hr/>	<hr/>
Total tax due		\$2,719.45

Your attention is invited to the appellate procedures contained in Section 19,504 and 19,506 of the Business Privilege Tax Law if the taxpayer feels aggrieved by the assessment of this office.

Very truly yours,

HARRY L. MANGERICH,
Commissioner of Revenue and
Taxation;

By /s/ M. A. CHACO,
Internal Revenue Officer.

Enclosure

(Copy)

Duplicate
InvoiceDepartment of Finance
Government of Guam

Acct. #2076

No. 009756-CT

George A. Shaheen

Date: November 23, 1954.

Forward from previous statement

500-11 Grt sales & rentals

Calendar Year 1951

(Service-Comm.)\$ 700.00

Calendar Year 1952

(Service-Comm.) 700.00

January to July, 1953

(Service-Comm.) 408.33

500-13 Penalty 90.42

Total\$1,898.75

(Copy)

Duplicate
InvoiceDepartment of Finance
Government of Guam

Acct. #2076

No. 009757-CT

re

George A. Shaheen

Date: November 23, 1954.

Forward from previous statement

500-11 Grt sales & rentals

August to December, 1953

(Service-Comm.)\$ 291.67

January to April, 1954

(Service-Comm.) 200.00

500-13 Penalty (Sec. 19514.01) 55.00

Penalty (Sec. 19514.03) 245.85

Interest 28.18

Total\$ 820.70

[Endorsed]: Filed January 10, 1955.

[Title of District Court and Cause.]

MOTION FOR CHANGE OF VENUE ON
THE GROUND OF CONVENIENCE OF
PARTIES AND WITNESSES IN THE IN-
TEREST OF JUSTICE

In the alternative, and only in the event that defendant's motion to dismiss the complaint is denied, then the defendant moves the court as follows:

I.

To issue an order transferring the above-entitled cause to the United States District Court in and for the Territory of Hawaii, on the ground that such transfer is for the convenience of the parties and witnesses as more clearly appears in the affidavit of Finton J. Phelan, Jr., hereto annexed as Exhibit A.

Dated this 10th day of January, 1955.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant,
George A. Shaheen;

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge & Lum, Attorneys for De-
fendant, George A. Shaheen, 206 Hawaiian
Trust Building, Honolulu, T. H.

[Endorsed]: Filed January 10, 1955.

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATEMENT
AND MOTION TO STRIKE

Motion for More Definite Statement

In the alternative, and only in the event that defendant George A. Shaheen's motion to dismiss the complaint is denied and the motion for change of venue should thereafter be denied, defendant, George A. Shaheen, moves the Court as follows:

I.

That the complaint is so vague and ambiguous that defendant should not reasonably be required to prepare a responsive pleading and defendant George A. Shaheen, therefore moves that plaintiff be ordered to furnish a more definite statement of the nature of its claim, as set forth, in the following respects:

1. In Paragraph 2 of the first count to set forth in detail the nature of the business that defendant has been carrying on, his place of business and the person or persons with whom said business was conducted.

2. In Paragraph 4 of the first count to set forth the source of the data therein enumerated, when any assessments were made and by whom, when any demands were made and by whom, the basis for the alleged fraud penalty, and the act or acts upon which the plaintiff relies to show fraud; the name of the Commissioner and the statutory authority

upon which he bases his claim to office and the manner and means of his appointment to such office.

3. In the second paragraph of Count Two to set forth the nature of the business in which it is alleged the defendant was engaged and the sections of Bill No. 3, Eighth Guam Congress, and its amendments, now Chapter 6, Title XX, Government Code of Guam, which, with respect to that business, if any, require this defendant to file returns or to pay any tax.

4. In the third paragraph of Count Two to set forth the source of the figures of income of this defendant.

5. In the second paragraph of Count Three to set forth the nature of the business in which it is alleged the defendant was engaged and the sections of Bill No. 3, Eighth Guam Congress, and its amendments, now Chapter 6, Title XX, Government Code of Guam, which, with respect to that business, if any, require this defendant to file returns or to pay any tax.

6. In the third paragraph of Count Three to set forth the source of the figures of income of this defendant.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant,
George A. Shaheen.

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge & Lum, Attorneys for Defendant, George A. Shaheen, 206 Hawaiian Trust Building, Honolulu, T. H.

Motion to Strike

In the alternative, and only in the event that defendant's motion to dismiss the complaint is denied, and thereafter the motion for change of venue and motion for more definite statement be denied, then defendant, George A. Shaheen, moves the court to strike Count Two and Count Three of the complaint on the ground that they fail to show that the defendant was engaged in any pursuit, the following of which rendered him liable to pay any tax to the Government of Guam.

To strike from Count One the allegations of fraud and a fraud penalty on the ground that the provisions of the Federal Rules of Civil Procedure have not been complied with.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant,
George A. Shaheen.

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge and Lum, Attorneys for De-
fendant, George A. Shaheen, 206 Hawaiian
Trust Building, Honolulu, T. H.

[Endorsed]: Filed January 10, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION

To Howard D. Porter, Attorney General of Guam,
Attorney for Plaintiff, Government of Guam.

Please take notice that the undersigned will bring the attached Motion to Dismiss, Motion for Change of Venue, Motion for More Definite Statement and Motion to Strike, on for hearing before the District Court of Guam at its courtroom, Guam Congress Building, City of Agana, unincorporated territory of Guam, on the 21st day of January, 1955, at 09:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard.

Dated this 10th day of January, 1955, at the City of Agana, unincorporated territory of Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant,
George A. Shaheen.

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge and Lum, Attorneys for Defendant, George A. Shaheen, 206 Hawaiian Trust Building, Honolulu, T. H.

Receipt of copy acknowledged.

[Endorsed]: Filed January 10, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that George A. Shaheen, the defendant herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the opinion and final order of the District Court of Guam assuming jurisdiction of this action, entered on the 21st day of January, 1955.

Dated at Agana, Guam, this 31st day of January, 1955.

/s/ FINTON J. PHELAN, JR.,
Attorney for Defendant;

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge and Lum, Attorneys for Defendant, 206 Hawaiian Trust Building, Honolulu, T. H.

Receipt of copy acknowledged.

[Endorsed]: Filed January 31, 1955.

District Court of Guam,
Territory of Guam

Civil Case No. 73-54

GOVERNMENT OF GUAM,

Plaintiff,

vs.

GEORGE A. SHAHEEN,

Defendant.

Before: The Honorable Paul D. Shriver, Judge.

HEARING ON MOTIONS
TRANSCRIPT OF PROCEEDINGS

January 21, 1955
Agana, Guam

Appearances:

For the Plaintiff:

THAD TISDALE,
Deputy Island Attorney,
Government of Guam.

For the Defendant:

FINTON J. PHELAN, JR.,
Attorney-at-Law,
Agana, Guam.

The Court: First order of business?

The Clerk: The matter of the Government of Guam vs. George A. Shaheen coming on for hearing on motions.

Mr. Phelan: If it please the Court, I believe the motions speak for themselves.

The Court: Now which motion do we have before us this morning?

Mr. Phelan: We have a motion to dismiss, a motion for a change of venue and, if I am not mistaken, a motion to strike.

The Court: Motion to dismiss will be denied. Now what is your next motion?

Mr. Phelan: The next is a motion for change of venue, if it please the Court.

The Court: The motion for change of venue will be denied.

Mr. Phelan: The next is a motion for a more definite statement.

Mr. Tisdale: I believe that is combined with your motion to strike, isn't it, Mr. Phelan?

Mr. Phelan: Yes, but they are set up separately.

The Court: What is your view as to this motion for a more definite statement?

Mr. Tisdale: The motion for a more definite statement and motion to strike are successive motions under Rule 12 which are specifically barred by 12(g) and 12(h). Neither of those motions come within the exception of 12(g) or 12(h) and are barred, sir. Rule 12 calls for and states specifically

that all motions under Rule 12 must be made at one time and if not so done, under 12(g) and 12(h) they are waived.

The Court: What was the first motion?

Mr. Tisdale: I beg your pardon, sir?

The Court: What was the first motion?

Mr. Tisdale: The first motion was the motion filed on the 29th of November which was made under Rule 12(b)(2) and (4).

The Court: And your motion for more definite statement?

Mr. Tisdale: Was not included.

The Court: Filed on January 10. The November motion went to what?

Mr. Tisdale: It went to—I think it was a motion to quash and also, I think, went to alleged defect in service. I think the motion was under lack of jurisdiction over the person and insufficiency of process. That is 12(b)(2) and (b)(4).

The Court: Those motions went to the jurisdiction of the Court?

Mr. Tisdale: They are specifically included under Rule 12(b), if the Court please, and the construction of the rule states that all of them shall be included.

The Court: Was a motion going to jurisdiction made at any time?

Mr. Tisdale: Jurisdiction of the subject matter, if it please the Court, not jurisdiction of the person; jurisdiction of the person can be waived.

The Court: Oh, it can be waived?

Mr. Tisdale: Also as to all of those motions there are many cases holding that under the present

rule it is not necessary to make separate motions, and this rule provides you may plead both to the jurisdiction to the person and defenses to the merits of the case without waiving your objection to the jurisdiction of the person. In the cases recited in our response, may it please the court, we have quoted several with regard to this specific point. I may call the court's attention to the first paragraph of the quotation on page 3 of the government's response. It is specifically in point.

The Court: Now Rule 12(b) specifically, of course, provides that prior to any responsive pleading, the following defenses may be made by motion: Lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, failure to join an indispensable party. Now as you recall, the original motion was in support of the motion that upon the ground that the defendant, George A. Shaheen, was under the protection of the Court at the time that he was served, and did I not in overruling that, state that in view of the fact he had done other business, give the defendant a certain amount of time in which to answer or otherwise plead?

Mr. Tisdale: I believe it was a certain amount of time to answer; I am not certain. However, may it please the Court, in the motion was also brought up the question of insufficiency of process, not only the matter of serving the defendant while he was under the protection of the Court but the matter

of process itself. I believe it was objected to specifically because the process that was served was either by Gregorio Babauta of the Island Attorney's office or the one that the policeman served, and his objection to sufficiency of process was also a motion under 12(b).

The Court: Well, the original motion went, of course, to the jurisdiction. Now it seems to me it is obviously foolish to require a defendant to move to the merits of the case at the same time he is moving to the jurisdiction.

Mr. Tisdale: May it please the Court, that is the purpose, as I understand it, of Rule 12, that it has abolished your distinction between general and special appearances, and your general rules concerning waiver of defects, and states specifically "Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required." It is our construction of Rule 12, which the cases we have cited here we believe hold, that it is mandatory upon the defense now under Rule 12 that they plead not only their objections to the jurisdiction of the Court of the person, but they also combine in that motion all of their other objections. We believe that is the holding in the three cases cited and in particular——

The Court: The minutes of the court show that the Court gave the defendant 30 days in which to answer. Consequently all the motions will be denied

since the defendant has not answered. He will be given ten days in which to answer. I think it is substantially correct that all motions must be filed at the same time since, of course, the obvious purpose of the rule is to expedite the arriving at issues, but since we have definitely ordered 30 days in which to answer or otherwise plead, I feel that is discretionary with the Court, giving the party an opportunity to move to the pleadings, so all motions will be denied and the defendant will be given ten days in which to answer.

District Court of Guam,
Territory of Guam—ss.

I, Dorothy L. Wilkins, Official Court Reporter for the District Court of Guam, hereby certify the above and foregoing to be a true and correct transcript of the stenographic shorthand notes taken in the above-numbered case at the said time and place as set forth.

/s/ DORTHY L. WILKINS,
Official Court Reporter.

[Endorsed]: Filed March 29, 1955, D. C. of Guam.

[Endorsed]: Filed April 4, 1955, U.S.C.A.

Civ-73-54

GOVERNMENT OF GUAM,

vs.

GEORGE A. SHAHEEN.

MINUTES

11/23/54—Plaintiff having filed a Motion for Production, Inspection, and copying of Documents. Ordered hearing on said motion be had on Friday, December 3, 1954, at 9:30 a.m.

11/29/54—It appearing that the plaintiff filed on November 23, 1954, a Notice of Taking Deposition of defendant on November 30, 1954, and that on this day the defendant filed a Notice of Motion for hearing of objections to taking of Deposition on said day. Ordered hearing on said motion to object be had on Friday, December 3, 1954, at 9:30 a.m. It further appearing that the defendant on this day has filed a special appearance and Motion to Dismiss, Ordered that said motion be heard on Friday, December 3, 1954, at 9:30 a.m.

12/3/54—Hearing: Government appears by Louis A. Otto, Jr., and Richard Rosenberry, Deputy Island Attorneys. Defendant appears by Finton J. Phelan, Jr., his attorney. By agreement between parties, Ordered hearing on motions continued to Friday, December 10, 1954, at 9:30 a.m.

12/10/54—Hearing: Government appears by Thad Tisdale and Richard Rosenberry, Deputy Island Attorneys. Defendant appears by Finton J. Phelan,

Jr., his attorney. Having heard the arguments of the attorneys for the respective parties, Ordered defendant's Motion to Dismiss denied and defendant must plead. Attorney for defendant given thirty (30) days in which to answer. Court further finds that the Chief Commissioner of Guam is not a disinterested party to an action of this kind brought by the Government of Guam, therefore, Notice of Taking of Deposition and Deposition Subpoena are quashed. Attorneys for plaintiff to prepare Order and submit same to the Court, on defendant's Motion to Dismiss. Attorney for the defendant to prepare Order on Notice of Taking of Deposition and Deposition Subpoena and submit same to the Court.

1/10/55—Special Appearance and Motion to Dismiss, Motion for Change of Venue, etc., Motion for More Definite Statement and Motion to Strike, and Notice of Motion having been filed this date, Ordered hearing on the motions set for Friday, January 21, 1955, at 9:30 a.m.

1/21/55—Hearing: Government appears by Thad Tisdale, Deputy Island Attorney. Defendant appears by Finton J. Phelan, Jr., his attorney. Having heard the arguments of the attorneys for the respective parties, Ordered all motions denied. Defendant given ten (10) days in which to answer.

Attest: A True Copy.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk, District Court of
Guam, Territory of Guam.

Case No. 73-54

COPY OF DOCKET ENTRIES

11/23/54:

1. Filed Complaint.
2. Filed appointment of special process server—Gregorio S. Babauta. Issued summons & 1 copy & 1 copy of Complaint to sp. proc. server.
3. Filed Mtn for an Ord for leave to take Deposition of deft.
4. Filed affid in suppt of Mtn to take deposition.
5. Filed Order of Court granting motion to take deposition of deft.
6. Filed Notice of tak of Dep of deft on Nov. 30.
7. Filed Motion for Production, Inspection and copying of documents.
8. Filed Notice of Mtn. Hearing Dec. 3, 9:30.

11/24/54:

9. Filed summons with Affidavit of service attached thereto.

11/29/54:

10. Filed Notice of Mtn re objection of tak of Dep of deft. Hng Dec. 3.
11. Filed sp appr & Mtn to Diss.
12. Filed Affid in suppt of Mtn to Diss—Phelan.
13. Filed Memo in suppt of Mtn to Diss.
14. Filed Notice of Motion re Dissl. Hng set for Dec. 3.

12/3/54:

- Hng: Attys present by Agree hng on mtns cont Dec. 10.

12/9/54:

15. Filed affidavit of V. U. Zafra.

16. Filed govt's Memo in opposition to mtn of deft.

12/10/54:

17. Filed cert of service of pltf's Memo in opposition. Hng: Attys present. Arguments had. Deft's Mtn to Diss denied. Deft's Mtn in opp to tak of Dep sustained. Notice & Subpoena quashed. Deft prop serv & must plead. Deft given 30 days to ans. Deft to draw Ord.

12/14/54:

18. Fld Ct Ord denying Deft's Mtn to Dis.

12/17/54:

19. Fld Ord Quashing Mtn for Production, Inspection & Copying of Documents, etc.

1/10/55:

20. Fld Spe Appearance and Mtn to Diss.

21. Fld Mtn for Change of Venue, etc.

22. Fld Mtn for More Definite Statement and Mtn to Strike.

23. Fld Notice of Mtn. Hrng on Mtns Jan. 21.

1/20/55:

24. Fld govt's Response (Memo in opposition).

25. Fld Cert of Service of Response.

1/21/55:

Hng: Attys present. Arguments had. Ord all motions denied. Deft given 10 to ans.

1/31/55:

26. Fld Notice of Appeal.

27. Fld Bond for Costs on Appeal.

3/9/55:

28. Fld Statements of Points on Appeal.

29. Fld Designation of Contents of Record on Appeal.

Attest: A True Copy.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk, District Court of Guam,
Territory of Guam.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Roland A. Gillette, Clerk of the District Court of Guam for the Territory of Guam, M. I., do hereby certify that the following documents, to wit:

1. Complaint, filed November 23, 1954.
2. Appointment of Special Process Server, filed November 23, 1954.
3. Motion to take Deposition of defendant, filed November 23, 1954.
4. Affidavit of Harry L. Mangerich in support of Motion, filed November 23, 1954.
5. Order authorizing taking of deposition of defendant, filed November 23, 1954.
6. Notice of taking of deposition, filed November 23, 1954.

7. Motion for production, inspection and copying of documents, filed November 23, 1954.
8. Notice of Motion, filed November 23, 1954.
9. Summons issued November 23, 1954, with attached affidavit of service of summons and Complaint and various other documents, filed November 24, 1954.
10. Notice of Motion regarding taking of depositions, filed November 29, 1954.
11. Motion to Dismiss, filed November 29, 1954.
12. Affidavit of Finton J. Phelan, Jr., in support of Motion to Dismiss, filed November 29, 1954.
13. Memorandum of Points and Authorities in support of Motion to Dismiss, filed November 29, 1954.
14. Notice of Motion on Motion to Dismiss, filed November 29, 1954.
15. Memorandum of Plaintiff in opposition to Motion, with affidavits of Robert M. Hino, William Renforth and Florencio T. Ramirez attached, filed December 9, 1954.
16. Order denying defendant's motion to vacate service of summons, filed December 14, 1954.
17. Order quashing motion for production, inspection and copying of documents and notice of taking deposition, filed December 17, 1954.
18. Special appearance and Motion to Dismiss, filed January 10, 1955.
19. Motion for Change of Venue, filed January 10, 1955.
20. Motion for More Definite Statement and Motion to Strike, filed January 10, 1955.

21. Notice of Motions, filed January 10, 1955.
22. Memorandum of Plaintiff in opposition to Special Appearance and Motion to Dismiss, Motion for Change of Venue, Motion for More Definite Statement and Motion to Strike, filed January 20, 1955.
23. Notice of Appeal, filed January 31, 1955.
24. Bond for Costs on Appeal, filed January 31, 1955.
25. Statement of Points on Appeal, filed March 9, 1955.
26. Designation of Contents of Record on Appeal, filed March 9, 1955.
27. Certified copy of Clerk's Minutes.
28. Certified copy of Docket Entries.

are the original or certified copies of the original documents filed in the office of the clerk in the above-entitled case.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of the aforesaid court at Agana, Guam, M. I., this 9th day of March, A.D. 1955.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk of the Court.

[Endorsed]: No. 14690. United States Court of Appeals for the Ninth Circuit. George A. Shaheen, Appellant, vs. Government of Guam, Appellee. Transcript of Record. Appeal from the District Court of Guam, Territory of Guam.

Filed March 12, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14690

GEORGE A. SHAHEEN,

Appellant,

vs.

GOVERNMENT OF GUAM,

Appellee.

STATEMENT OF POINTS ON APPEAL

The points upon which Appellant will rely on appeal are:

The Court erred in the following particulars:

1. In failing to dismiss the complaint on the ground that the defendant is not a citizen or resident of the unincorporated territory of Guam and at the time of service of process was not transacting any business within said unincorporated territory of Guam and was in the unincorporated territory of Guam solely to defend an action in the District Court of Guam.

2. In failing to dismiss the second and third counts in the complaint on the grounds that the provisions of Section 19503 of Chapter XX of the Government Code of Guam had not been complied with and that absent such compliance no action can be maintained.

3. In failing to dismiss the complaint on the ground that neither the Commissioner of Internal

Revenue or the Attorney General of the United States had authorized or directed the commencement of the action.

4. In failing to dismiss the complaint on the ground that the District Director of Internal Revenue at Baltimore, Maryland, is the proper officer duly authorized by law to collect income taxes within the unincorporated territory of Guam.

5. In failing to dismiss the complaint on the ground that no officer of the Territorial Government of Guam has been authorized by Statute to collect any income tax.

6. In failing to dismiss the complaint on the ground that with respect to income tax within the unincorporated territory of Guam there is no such officer as the Commissioner of Revenue and Taxation, and further that no officer of the unincorporated territory of Guam has the authority, power or duty to prepare Commissioner's income tax returns or to make jeopardy assessments.

7. In failing to dismiss the complaint on the ground that the defendant is a citizen and resident of the Territory of Hawaii, which by the Statutes of the United States exempt him from the payment of taxes to the unincorporated territory of Guam, which unincorporated territory is entitled to receive such portion of any taxes so paid to the United States as the Treasury Department of the United States may determine to have been derived from Guam and by the Treasury Department of the

United States than pursuant to Statute covered into the treasury of Guam.

8. In failing to dismiss the complaint on the ground that it failed to state a claim upon which relief can be granted (Section 259, Title 26, U.S.C.A.).

Dated at Agana, unincorporated Territory of Guam, this 29th day of March, 1955.

/s/ FINTON J. PHELAN, JR.,
Attorney for Appellant;

/s/ FINTON J. PHELAN, JR.,
For Heen, Kai, Dodge & Lum, 206 Hawaiian
Trust Building, Honolulu, T. H., Attorneys for
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 4, 1955.